

However, unbeknownst to Inman, Pennington did not file the assignment application with the FCC, but, instead, was demanding an additional \$1,500 from the prospective purchaser before he would file the application. Upon discovering that the assignment application had not been filed with the Commission, Inman promptly recommenced his search for financing until he secured a financial commitment from Texrock. Findings, ¶¶14, 16-17.

45. Although the actions of AJI's former FCC counsel cannot excuse the licensee's violations of Section 73.1740, when considered in connection with Inman's repeated efforts to employ an engineering firm and secure the necessary financing to return KYEG(FM) to broadcast operations, Pennington's conduct is relevant in considering the licensee's good faith.<sup>17</sup> This is particularly true with respect to the period between October 1, 1995, through March, 1996, when, in accordance with Pennington's advice, Inman attempted to sell Station KYEG(FM). Indeed, this six-month period covers nearly the entire portion of the period in which the station was off the air without silence authority immediately prior to the release of the HDO. Thus, because the record establishes that, with the exception of the brief period of time in which Inman, upon the advice of his former FCC counsel, attempted to sell the station, Inman acted diligently in attempting to secure the necessary financing and engineering services to return KYEG(FM) to broadcast operation. Therefore, because AJI's violations of Section 73.1740 were not the result of a deliberate attempt to

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<sup>17</sup> The Commission generally is reluctant to excuse an applicant's procedural deficiencies because of the alleged malfeasance of counsel. *See, e.g., Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419, 420 n.6 (1986). However, the Commission also has been reluctant to impute disqualifying misconduct to an applicant where the record shows its good faith reliance on counsel. *See WEBR, Inc. v. FCC*, 410 F.2d 158, 167-68 (D.C. Cir. 1969) (good faith reliance on counsel is relevant in assessing one's candor); *Broadcast Associates of Colorado*, 104 FCC 2d 16 (1986) (applicant who improperly certified application on advice of counsel not disqualified).

flout the Commission's processes, they should not be disqualifying. *Hometown Media, Inc.*, FCC 96D-06 (ALJ, released September 17, 1996).

46. Moreover, the record also indicates that AJI apparently believed that KYEG(FM) was to resume broadcast operations with the Class C1 facilities authorized by construction permit (BPH-940921GK), rather than its previously existing Class A facilities. As noted above, upon examining the station's property following consummation of the assignment from Carolina Communications, Inman found that all of the equipment had been removed, and there was no equipment available to return the station to operation. Findings, ¶8. Because the grant of the assignment was conditioned upon AJI resuming broadcast operations within 60 days of consummation of the assignment, shortly before the expiration of this 60-day period, AJI filed an application on April 20, 1995, requesting an extension of time to complete construction of the Class C1 facilities.<sup>18</sup> In addition, in response to the Bureau's letters dated June 2, 1995, and July 17, 1995, notifying AJI that it had not complied with the condition set forth in the grant of the assignment that it resume broadcast operations within 60 days, AJI filed an STA request on July 20, 1995, in which it requested permission to remain silent while it completed construction of the Class C1 facility upgrade. Findings, ¶¶4-5.

47. AJI's apparent lack of understanding that it was required to resume broadcast operations of KYEG(FM) as a Class A facility, regardless of the status of its construction of the Class C1 upgrade, is further illustrated by the fact Pennington advised Inman that he had until January 31, 1996, within which to either reconstruct or sell the station, and Inman's belief that

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<sup>18</sup> The sixtieth day after consummation of the February 21, 1995, assignment was Saturday, April 22, 1995. (Official notice requested).

January, 1996, was the expiration date for construction of the Class C1 facilities.<sup>19</sup> Findings, ¶14. In any event, AJI's misunderstanding regarding the FCC's expectation that Station KYEG(FM) resume broadcast operations as a Class A facility provides an additional basis for finding that the Section 73.1740 rule transgressions do not reflect disqualifying misconduct, and, therefore, should not result in revocation of the KYEG(FM) license.

## V. CONCLUSION

48. As demonstrated herein, AJI has made extensive efforts and expended substantial resources in attempting to resume the broadcast operations of Station KYEG(FM). In addition to securing financing and employing an engineering firm, AJI is in the process of taking all of the necessary steps to return the station to on-air operation. Thus, the record establishes that AJI has the capability and intent to resume broadcast operations expeditiously.

49. The record also establishes that AJI did not violate Section 73.1750 of the Commission's rules because it was not responsible for discontinuing the operation of Station KYEG(FM), and has acted diligently in attempting to return the station to on-air operation.

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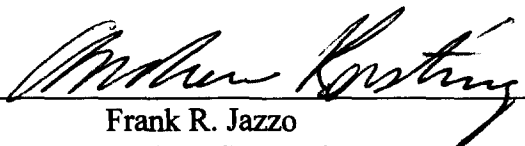
<sup>19</sup> Despite the filing of AJI's April 20, 1995, application requesting an extension of time to complete construction of the Class C1 facilities, and the Bureau's April 1, 1996, denial of that application, Section 73.3535(c) of the rules provides that, in the case of an assignment, the time period allowed for construction of unbuilt modification facilities shall be 12 months from consummation of the assignment. *See* 47 CFR §73.3535(c). Thus, AJI should not have been required to construct KYEG(FM)'s Class C1 facilities until February 21, 1996. Although this expiration date for construction does not coincide exactly with Pennington's and Inman's understanding of January 31, 1996, as being the expiration date of the Class C1 permit, Section 73.3535(c) of the rules helps to explain why Pennington and Inman believed AJI had until January 31, 1996, to either construct or sell the station.

50. Furthermore, although AJI has violated Section 73.1740 of the rules on two occasions by remaining off the air without silence authority for four months, and six and one-half months, respectively, these rule violations were inadvertent, of relatively short duration, and do not reflect a deliberate flouting of the Commission's rules. They also are mitigated by AJI's extensive and continued efforts to return the station to on-air operation, as well as the actions of the licensee's former FCC counsel. Therefore, because AJI's transgressions of Section 73.1740 of the rules do not adversely affect the licensee's basic qualifications, they should not result in revocation of the KYEG(FM) license.

WHEREFORE, In light of the foregoing, it is respectfully requested that the issues designated against AJI Broadcasting, Inc. in the Order to Show Cause and Hearing Designation Order be RESOLVED in the LICENSEE'S FAVOR.

Respectfully submitted,

AJI BROADCASTING, INC.

By:   
Frank R. Jazzo  
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. Seventeenth Street, 11th Floor  
Rosslyn, Virginia 22209  
(703) 812-0400

September 24, 1996

ask2/findings.2

**Exhibit No. 1**

**Letter Dated March 25, 1996, From  
Laura L. Smith to Alma Hughes**

March 25, 1996

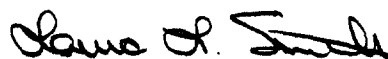
Alma,

I work in the FM Branch. Late last week I contacted you about a request for a call sign that had been filed in February of 1995 and had not been processed yet. You informed me that, according to BAPS, the assignment of the station--KRBG(FM), Canadian, Texas--had not been consummated and that you could not process the call sign change request until the consummation letter was on file and BAPS was updated.

Thus, enclosed you will find a copy of a letter notifying us of the consummation of the assignment of KRBG(FM), Canadian, Texas from Carolina Communications to AJI Broadcasting, Inc. (BAPS has already been updated to reflect the new licensee). I am also enclosing a copy of the request for call sign change with respect to KRBG. The applicant is requesting the new call sign of KYEG. This request was filed on February 24, 1995. Now that the consummation has been put into BAPS, I assume you can go ahead and process the call sign change request.

Once you have updated the system to reflect the new call sign--please let me know so I can relay the information to the applicant. I can be reached at 418-2768.

Thank you,



Laura L. Smith  
FM Branch  
Room 332

Copy

WILLIAM J. PENNINGTON, III  
Attorney at Law  
5519 Rockingham Road-East  
Greensboro, NC 27407  
(910) 299-5257

February 10, 1995

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

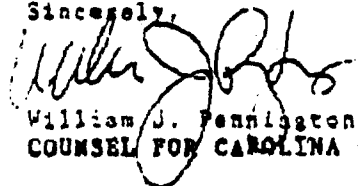
RE: Notification of Consummation of License Assignment

Dear Mr. Caton:

Please accept this letter as notification that on February 10, 1995 the license assignment for Station KRBC(FM) at Canadian, Texas was consummated between Carolina Communications (Assignor) and AJI Broadcasting, Inc. (Assignee).

Should there be any questions regarding this matter please do not hesitate to contact the undersigned.

Sincerely,



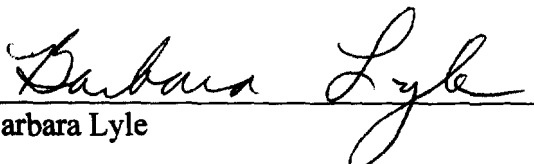
William J. Pennington, III  
COUNSEL FOR CAROLINA COMMUNICATIONS

**CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 24th day of September, 1996, copies of the foregoing "Proposed Findings of Fact and Conclusions of Law of AJI Broadcasting, Inc." were hand delivered to the following:

Administrative Law Judge Edward Luton  
Office of Administrative Law Judges  
Federal Communications Commission  
2000 L Street, NW, Room 225  
Washington, DC 20554

Mark Berlin, Esquire  
Robert Zauner, Esquire  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 8202-A  
Washington, DC 20554

  
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Barbara Lyle